

FREDERICK COUNTY PLANNING COMMISSION
MEETING OF JULY 8, 2009
9:30 a.m.

Members Present: Audrey Wolfe, Chairperson; Catherine Forrence, Vice-Chair; Kai Hagen, Commissioner Liaison; Joe Brown and John McClurkin.

Robert White and Richard Floyd Absent

Staff Present: Gary Hessong, Director, DPDR; Stephen O'Philips, Principal Planner; Tolson DeSa, Principal Planner; Kathy Mitchell, Assistant County Attorney; Eric Soter, Director, Planning and Zoning; Ron Burns, Traffic Engineer; Betsy Smith, Director of DPDR Engineering; Mark Depo, Deputy Director, Jim Gugel, Chief Planner; Planning and Zoning; Shawna Lemonds, Project Manager; and Linda Williamson, Development Review Technician.

1. MINUTES:

Planning Minutes

4/22/09, Ms. Forrence made a motion to approve minutes 2nd Mr. McClurkin
Yea 3, Nay 0, Abstained 2(Hagen/Brown), Absent (White/Floyd Absent)

4/29/09, Ms. Forrence made a motion to approve minutes 2nd Mr. Brown
Yea 5 Nay 0 Absent (White/Floyd Absent)

5/27/09, (afternoon)Ms. Forrence made a motion to approve minutes 2nd Mr. Brown

Yea 5 Nay 0 Absent (White/Floyd Absent)

5/27/09, (evening)Ms. Forrence made a motion to approve minutes 2nd Mr. Brown

Yea 5 Nay 0 Absent (White/Floyd Absent)

Development Review

5/13/09, Mr. Hagen made a motion to approve minutes 2nd Mr. Brown
Yea 5 Nay 0 Absent (White/Floyd Absent)

2. PLANNING COMMISSION COMMENTS:

Mr. Hagen stated APFO School and Roads passed at the BOCC meeting yesterday (July 7, 2009)

3. AGENCY COMMENTS/AGENDA BRIEFING:

Jim Gugel, Chief Planner; spoke on the public hearing next week the 15th @ 7:00 pm, he wanted to go over the format and ground rules so everyone is aware of how the meeting will be conducted .

Eric Soter, Director, Planning and Zoning, spoke to the planning commission in regards to the meeting on how long it might go and possibly moving to July 22nd.

Gary Hessong, Director, DPDR, made a request to add an unscheduled item to the agenda, Villages of Urbana, Section M1-E Rear Setback Change.

Decision: Mr. Brown made a motion to add the unscheduled item to the agenda and to hear the item first, 2nd Mr. Hagen.

Yea 5 Nay 0 (White/Floyd Absent)

Gary Hessong, Director, DPDR, also reminded the planning commission of the Public Hearings and that some items may need to be suspended to the end of the public hearings or moved to next week.

4. MISCELLANEOUS REQUEST

- a) Villages of Urbana, Section M1-E Rear Setback Change – Request to amend the rear setback from 18’ to 15’ for 22 residential townhouse lots (Lots #1347-1368) in Section M1-E. Zoned PUD. Located at the eastern intersection of Spring Street and Urbana Pike (Old MD 355).
AP # 9671, File# S-1065M-1E, Stephen O’Philips

All parties and Staff wishing to give testimony in this matter were sworn in.

Staff Findings/Recommendations:

Findings:

- 1) The Planning Commission approved setback modifications in 2006 for Section M1D/E in accordance with the authority under the Zoning Ordinance § 1-19-10.700 (C) (1) (b) for 18’ rear setback for Lots #1347 -1368, but also approved plan that clearly showed labeled 15’ rear setbacks.
- 2) The approval of an 18’ setback value is unusual and is likely the result of a typo.

Recommendation:

Should the Planning Commission approve this application (AP # 9641), the Staff recommends that the following items be added as conditions to the approval:

- 1) The Applicant shall submit correction Plats for the affected lots to provide for the setback clarification.

Staff Presentation:

Stephen O’Philips, DPDR, presented the Staff Report

There was no applicant presentation or public comment.

Decision: Mr. Brown made a motion to accept the findings of the staff, 2nd Mr. Hagen.

Yea 4, Nay 0, Abstained 1(Forrence), Absent(White/Floyd)

5. PHASE II – MXD EXECUTION PHASE

- a) Banner Life, Lot 501 – Requesting site plan approval for one, two-story office building to be developed in three construction phases. Located at the South-side MD 80, West-side Urbana Parkway, North-side Bennett Creek Boulevard and East-side Bennett Creek Avenue (immediately north of Fannie Mae Building). Zoned: Mixed use development (MXD) per § 1-19-10.500 of the Zoning Ordinance. File# SP03-09, AP# 9445, Stephen O’Philips

All parties and Staff wishing to give testimony in this matter were sworn in.

Staff Findings/Recommendations:

Findings:

The Applicant proposes to develop one lot with a total of 140,000 sq. ft. of office in three construction stages. The Applicant is requesting approvals for:

- ☐ Phase II (Execution) Plan (AP # 9445)
- ☐ Loading Space Modification (AP # 9445)

The Staff finds that the:

- 1) Zoning Code is silent on the length of time for which a Phase II (Execution) Plan can be approved. However, a portion of the code (§ 1-19-10.500 (H) (2) gives guidance as to the intent:

Phase II: Execution Phase. This guides the project through the customary subdivision and site plan process.

Therefore, in the absence of clear language, the Staff would infer that the Land Use Plan portion of this Phase II Execution Plan can be given an indefinite approval period, and that the Site Plan portion of this Phase II Execution Plan can be given approval for a two-year period in accordance with § 1-19-3.300 (B) of the zoning Ordinance.

- 2) The APFO approval was granted with the 2000 Preliminary Plat approval and there were several Letters of Understanding (the latest being July 2003) that govern the development of all lots in this MXD. The development of the Fannie Mae building in 2004 required that all road, water and sewer infrastructure be in place. Therefore, no infra-structure improvements are needed with the development of this lot, Lot # 501.

- 3) The goals of the MXD as expressed in § 1-19-10.500 (A) (2) of the zoning Ordinance have largely been met with amenities such as courtyard seating and table areas; sidewalk connections, contributory architecture and sufficient landscaping.
- 4) Proposed heights do not exceed 60' and need no specific FcPc approval.
- 5) The loading space modification request is consistent with other, similar office developments.
- 6) The parking proposal is adequate to park the office area based on demonstration of historical parking needs for other, similar projects. However, if the first phase of construction is not followed by the second and third phases in a timely manner, the site will be significantly over-parked for the amount of time that Phase 1a is built without the subsequent construction phases. Also, a "Small Car" parking scheme would alleviate the condition of the randomly designed areas with less than the standard 9' x 20' parking spaces. Even though Frederick County has not yet established maximum percentages of small Car parking ratios, a provision of Small Car parking less than 30% of the total would be similar to other jurisdictional standards in Maryland for Small Car parking standards.
- 7) Based upon the discussions in the report, the application meets and/or will meet all applicable Zoning, Subdivision, APFO and FRO requirements once all Staff and Agency comments and conditions are met or mitigated.

Recommendation:

Should the Planning Commission approve the Phase II (Execution) Plan for this Mixed Use Development, an (AP# 9445), the motion for approval should include the following items:

- ❑ Loading Spacing Modification (AP # 9445)

And, the Staff would recommend that the following items be added as conditions of approval:

- 1) Provide a "Small Car" parking scheme with fairly-distributed "Small Car" parking bays that do not penalize Small Car drivers with remote and random placement of Small Car parking bays, less than 30% of the total parking spaces or provide resolution of less than 60'-bay parking widths without impinging on landscaping.
- 2) Provide elevation and topographic details of the retailing wall to be placed at the corner of Bennett Creek Ave.

- 3) Comply with Agency comments as this project moves through the development process, including but not limited to comments regarding utility line design, SWM issues, street addressing and transportation details.

Staff Presentation:

Stephen O'Philips, DPDR, presented the Staff Report

Lori Boyer, of the Office of Economic Development, spoke about the project being a great project and will bring 300 new jobs to Frederick County. And the Office of Economic Development Office supports this project

Eric Soter, Director, Planning and Zoning, stated the planning staff does not support the design of this project. He also discussed the possibility to see if the applicant would shift the building footprint to create a better design.

Larry Smith, Zoning Administrator, spoke on the setbacks, buffers and landuse requirements.

Ron Burns, DPDR, Development Review Engineering, spoke on the APFO for the site.

Applicant Presentation:

Mr. Tom Natelli, of Natelli Communities, and Ms. Krista McGowan, representing the applicant, presented the proposal.

Mr. Jimmy Atkins of Banner Life, spoke on the Banner Life Insurance Company and their plans to expand in Frederick County and how they look forward to being a good neighbor.

Mr. Mark Friis, Rodgers Consulting, answered questions from the planning commission members.

Mr. Mike Gill, with Akridge, spoke on the site lighting

Public Comment:

N/A

Rebuttal:

N/A

Decision: Mr. Brown made a motion for conditional approval with amending condition #1 to "Provide a Small Car Parking Scheme which is more friendly to (small car) parking close to the building rather than away from the building." and adding a condition #4, making setbacks for parking 12.5' and also in

accordance with Staff's Findings, Recommendations 2nd Mr. Hagen.

Yea 4 Nay 1(Forrence), (White/Floyd Absent)

6. SITE PLAN

- a) Global Mission Church – Requesting site plan approval for a 137,028 square foot church and associated parking fields. The plan is also proposing 397 parking spaces including 14 ADA-compliant spaces. This parcel is located north of MD 109 (with all access located in Montgomery County) on the west side of I-270 (at the Frederick County southern border). Zoned: Agricultural (AG); Places of Worship; Institutional, Urbana Planning Region. Tax Map 105 / Parcel 109. File# SP92-37, AP# 8995, Stephen O'Philips

All parties and Staff wishing to give testimony in this matter were sworn in.

Staff Findings/Recommendations:

Findings:

The Applicant proposes to build a 138,027 sq. ft. church with associated parking. The Applicant is requesting approvals for the following applications:

- ☐ Site Plan (AP # 8995)
- ☐ APFO (AP # 8996)
- ☐ FRO (AP # 9997)
- ☐ Loading Space Modification (AP # 8995)

The Staff finds that:

1. Site Plan approval can only be given for a two-year period from the date of FcPc approval.
2. Signature of the Site plan is dependent upon the completion of the forest plans and associated legal documents.
3. The APFO approval can be granted for as long as the site plan remains valid, but for no more than three (3) years. The approval is based on the Applicant's DOL that proffers pro rata contribution to one escrow account.
4. Compliance with septic capacity issues relies on strict compliance with the following conditions regarding limitations of use:
 - a) No more than 1,160 sanctuary seats;
 - b) No more than 500 dining Hall seats;
 - c) Kitchen use is limited to congregation activities only with disposable food service utensils;

- d) The kitchen cannot be permitted for commercial use; and
 - e) No day care or school use can be accommodated.
5. Additional, minor drafting additions and corrections are needed to bring this application in full compliance with the various Code requirements.
6. Based upon the discussion in the report, the Staff finds that the site plan application meets and/or will meet all applicable Zoning, Subdivision, APFO and FRO requirements once all Staff and Agency comments and conditions are met or mitigated. With certain conditions of approval added, the Staff offers no objection to approval.

Recommendation:

Should the FcPc choose to approve this Site Plan application (AP # 8995) for the building of a 139,027 sq. ft. church and associated parking fields, the associated requests should also be part of the motion:

- ☐ APFO (AP # 8996)
- ☐ FRO (AP # 8997)
- ☐ Loading Space Modification (AP # 8996)

Then Staff would recommend adding the following conditions to the approval:

- 1) Comply with well usage and septic capacity limitations according to the following limitations of use on the site:
- a) No more than 1,160 sanctuary seats;
 - b) No more than 500 dining Hall seats;
 - c) Kitchen use is limited to congregation activities only with disposable food service utensils.
 - d) The kitchen cannot be permitted for commercial use.
 - e) No day care use can be accommodated;
 - f) Water use and wastewater discharge shall not exceed 5,000 gallons on any day.
- 2) Complete the Final Forest Conservation Plan prior to Site Plan signature.
- 3) Comply with Agency comments as this project moves through the development process, addressing minor drafting corrections noted by Agencies, including, but not limited to:
- a) Health Department comments; and
 - b) Building Height and setback corrections
 - c) Zoning Administrator's requested changes and additions to the notes.

Staff Presentation:

Stephen O'Philips, DPDR, presented the Staff Report

Decision: Ms. Forrence made a motion to continue Global Mission Church to Wednesday, July 15, 2009 @ 1:00 pm. 2nd by Mr. Hagen.

Yea 5 Nay 0 (White/Floyd Absent)

Decision: A separate motion was made by Mr. Hagen, to continue the rest of DPDR planning commission agenda to Jul 15, 2009 @ 1:00pm. 2nd by Ms. Forrence

Yea 5 Nay 0 (White/Floyd Absent)

6. PUBLIC HEARING – TEXT AMENDMENT

- a) *Ordinance to Extend Certain Development Approvals and Deadlines* – Proposed ordinance to extend development approval periods and deadlines for site plans, preliminary plans, PUD Phase II plans, variance, special exceptions, etc. - Gary Hessong, Mark Depo, Kathy Mitchell

Individual Presentation(s):

Ashley Mancinelli, Esquire, spoke on behalf of the Russell site plan project and it will be expiring in August 2009 would ask to have Option 1 approved.

Andrew Di'Pasquale, of Miles and Stockbridge, is an advocate for Option 1.

Rand Weinberg, of Weinberg and Miller, made comments on Option 1 and also Option 2 and how it will affect his clients.

Rocky Mackintosh, Mackintosh LTD, spoke to urge not to leave the minor subdivisions off the list.

Krista McGowan, Miles and Stockbridge, wanted to comment on the wording of Option 1, and not to limit the plans approved prior to January 2009.

Mr. Mark Fritts, of Rodgers Consulting, extension period for 3yrs, and the public interest that a 3 yr element would be better. And to provide the maximum relief would be better.

Decision: Mr. Brown made a recommendation for adoption of an ordinance. 2nd Ms. Forrence.

Yea 4 Nay 0 Abstained (Hagen) (White/Floyd Absent)

Decision: Mr. Brown made a separate motion to include Minor Subdivisions. 2nd Ms. Forrence

Yea 4 Nay 0 Abstained (Hagen) (White/Floyd Absent)

I-270 US15 MULIT MODAL STUDY –
Proposed Highway Widening I-270/US 15 Multi-Modal Study-

Decision: Ms. Wolfe made an announcement that the I-270 US15 MULTI MODAL STUDY is moved to the 1st meeting in August.

- b) Ordinance to Revise Section 1-16-236(K) (Dead End Roads and Cul de Sac Streets) – Proposed ordinance to revise §1-16-236(K) to clarify that it applies to both new and existing dead-end roads and cul de sac streets, and to specify which rules apply to which zoning districts. - Gary Hessong, Kathy Mitchell

Individual Presentation(s):

Rocky Mackintosh, Mackintosh LTD, spoke on behalf of his clients project Manor at Holly Hills, and how his client is affected.

Krista McGowan spoke on behalf of the Manor at Holly Hills also, they have presented a proposal that would work for their client.

Decision: Ms. Forrence made a motion for approval in accordance with Staff's Findings, Recommendations, and Conditions. 2nd Mr. McClurkin.

Yea 3 Nay 0 Recused 1(Brown) Abstained (Hagen), (White/Floyd Absent)

- c) Zoning Text Amendment - ZT-09-04 – Proposed Ordinance to Amend Certain Sections of the Frederick County Code (Zoning Ordinance) Concerning the Site Plan Review: Review and Approval Procedures. The amendments will adopt three levels of site plan review into the zoning ordinance and update and edit the purpose and intent, review and approval procedures, application requirements, and approval criteria for the site plan review process. Shawna Lemonds.

Staff Presentation:

Shawna Lemonds presented an overview of the staff report and proposed text amendment.

Michael Chomel, of the County Attorney office answered questions from the planning commission.

Individual Presentation(s):

Ms. Carol Seppe, a Jefferson resident, stated-concerns regarding how the public would know the site plan approval and a change of use has occurred if there is no public hearing?

Mr. Dave Severn, of Severn, O'Conner, spoke regarding the approval process and concerns that the proposed language gives the planning commission the power to change zoning ordinance requirements.

Decision: Mr. Brown made a motion to recommend approval of ZT-09-04. 2nd Ms. Forrence.

Yea 4, Nay 0, (Hagen Abstain), (White/Floyd Absent)

Meeting adjourned at 3:49 p.m.

Respectfully Submitted,

Audrey Wolfe, Chairperson